ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2268 OF 2007

Shri Dhondiba Sadashiv Shete & Ors. ...Appellants.

Vs.

The Special Land Acqusition Officer, Pune. ...Respondents.

Mr. U.B.Nighot for the appellants.

Mr. S.N.Gawade, AGP for the State.

CORAM : ANOOP V. MOHTA,J.

DATED : 15th October, 2007

P.C.

1. The appellants being heirs of original claimant Dhondiba Sadashiv Shete have challenged the impugned judgment and order passed by the Extra Joint District Judge, Pune in Land Acquisition Reference No. 124 of 1992 whereby the application filed by the deceased Dhondiba was dismissed, by observing that the claimant and or his advocate remained absent even thereafter and thus failed to adduced any evidence.

2. The reference Application is dated 25th September, 1991. The claimant, Deceased Dhondiba expired on 09/05/1991. The Land Acquisition Reference notice issued by the Special Land Acquisition Officer, Pune to the District Judge, Pune on 06/10/1992 in the L.R.

No. 124/1992 in question. As per the Roznama of L.R.No. 124 of 1993, it is recorded on 18/06/1993 that, "Taken today. Claimant absent. Notice returned unserved (death). L.R. not given. Adjourned for order to 30/06/1993."

3. Even otherwise there is nothing on record that any one on behalf of the claimant appeared in the matter in view of this, basically for want of notice itself.

4. The appellants being heirs, therefore, have raised this specific ground in this present appeal. The fact remains that the reference was disposed of ex-parte and specially by not giving any opportunity to the heirs of the claimant. The rights of the claimants to lead evidence in support of their reference application just cannot be denied. In fact it goes to the root of the decision of such matters.

5. Therefore, taking note of this and in view of **Special Land Acquisition Officer, Bombay Vs. Shri Harichandra Ramji Patil, 2000 (1) Mh.L.J. 256,** this Court while considering the provisions of Land Acquisition Act, Section 18,19 and 30 and 53 r/w Order 22 of the Civil Procedure Code, (for short, "CPC") and

Limitation Act, Articles 120 and 121 observed that the procedure to bring legal representatives on record after the death of claimant need to be taken out by the Government Advocate/ State in reference.

6. Even otherwise, as recorded above in the interest of justice, and in view of the principle of natural justice also, I am inclined to quash and set aside the judgment dated 12/04/2004 passed in the Land Acquisition Reference No. 124 of 1999 by the Extra Joint District Judge, Pune. The matter is remanded back. The District Judge to proceed in accordance with law. Afresh the present Land reference application filed by the original claimants now it retain as filed by the legal heirs of the original claimants and basically to avoid further delay in the matter. The land reference application No. 124 of 1992 be disposed of preferably within eight months.

7. The appeal is allowed accordingly. No order as to costs.

(ANOOP V. MOHTA, J.)